

GOVERNMENT OF KARNATAKA

Social Welfare and Labour Department

Labour Dispute.—Industrial Dispute between the workmen and the management of Bharat Electronics Ltd., Jalahally Post, Bangalore-13.

Award of the Presiding Officer, Labour Court, Bangalore—published.

Read the following Papers:—

(1) Letter No. 1864/74-75, dated 31st January 1973, from Sri P. Srinivasacharya, Presiding Officer, Labour Court, Bangalore.

**BEFORE THE PRESIDING OFFICER,
LABOUR COURT, BANGALORE**

Dated this 31st day of January 1975

Present :

SRI P. SRINIVASACHARYA, B.A., LL.B.

Presiding Officer.

Reference No. 8 of 1973

First Party.—

1. P. G. Thangappan Nair ; and

2. M. K. G. Kurup, represented by the General Secretary, Bharat Electronics Employees' Union, Jalahalli P.O., Bangalore-13.

Vs.

Second Party.—

The Management of Bharat Electronics Limited, Jalahalli Post, Bangalore-13.

Reference.—Government Order No. FCL 1311 LLD 72, dated 19th January, 1973.

AWARD

1. The Government of Mysore (now Government of Karnataka) in their order No. FCL 1311 LLD 72 dated 19th January, 1973, have referred an industrial dispute existing between the above named parties to this Court for adjudication on the points of dispute noted below:—

“1. Is the management of Bharat Electronics Limited, Jalahalli Post, Bangalore-13, justified in dismissing the two workmen, viz. 1) Sri P. G. Thangappan Nair, Staff No. 1449 and 2) Sri M.K. G. Kurup, Staff No. 2592, Driver, from service?

2. If not, to what relief are the workmen entitled?”

2. The first party filed their claim statement saying that the reference had arose out of the demand notice dated 11th May 1972 made by the first party union on the second party for the reinstatement of Thangappan Nair and Kurup. The two workmen were active functionaries of the union. The management was displeased with the Union and the activities of its members. A false and interested complaint by a prejudiced person was deemed sufficient to proceed against the two workmen. Sri Kurup joined service on 4th December 1961 and Sri Thangappan Nair on 16th June 1958. A charge sheet dated 22nd November 1969 was issued to Sri Thangappan Nair alleging that he along with one Govi Kurup, driver, tried to obstruct the movement of bus near hungerstrike camp on 15th November 1969 at 5-15 P.M. and that at 8-45 P.M. on the same day the opposite party along with the same driver got into the bus and pulled out one Sri Gopal from the bus, tore his bush shirt and banian and assaulted him “why did you not stop the bus at 5-15 P.M. near the hungerstrike camp although we signalled you to slow down”. An identical charge-sheet was issued to the other employee, M. K. Govi Kurup. All the allegations were vague without specifying the particular act or omission against each of the individual. This was not *bonafide* and was done with ulterior motives.

The enquiry held was a joint enquiry. There is no provision for holding a joint enquiry when the chargesheets were issued separately. This had prejudiced the first party. The workmen were not supplied with a copy of the enquiry officer's report which is violative of principles of natural justice and the standing orders. The findings recorded by the Enquiry Officer is neither that of a reasonable man nor does it flow from the evidence before him. The findings were based more on presumptions and assumptions than on reason and the materials before him. It was of no consequence to the Enquiry officer that none of the witnesses produced by the company to support the complainant, Gopal, did in fact support his version. The enquiry officer deliberately has failed to notice very many material contradictions in the evidence before him. The chargesheet was contrary to the written complaint. The enquiry officer has chosen to ignore the defence and also ignored the evidence given by Sriyuths.—M. A. Raju, Jayaram and Subburam. The findings of the enquiry officer are perverse and vitiated. The order of dismissal was not passed by an authority who was competent to dismiss as per Standing Order. The punishing authority had ignored the extenuating circumstances while giving the extreme punishment. The punishment of dismissal was by way of victimisation and is excessive. It is therefore prayed to pass an award directing reinstatement with back wages.

3. The second party management filed objections saying that the management dismissed the two employees for proved misconduct and sought the approval of the Industrial Tribunal for the action so taken. The Industrial Tribunal was pleased to grant the approval prayed for and this dispute has now been referred. The allegation that the action taken against the first party workmen was in connection with or during the agitation carried on by the union in trade union disputes is disputed. The allegation that the management is displeased with the activities of the union is false and repudiated. It is also repudiated that a false and interested complaint of prejudiced person

was deemed sufficient to proceed against the two workmen. The allegation that the enquiry was not in accordance with the office order and the dismissal was not ordered by proper authority as per Standing Order is untenable. It is also denied that the chargesheets were vague. The allegation that the enquiry officer deliberately failed to notice the material contradictions in the evidence and other allegations are denied. The objection to the holding of a joint enquiry was an after thought. The contention that the non-supply of a copy of the enquiry officer's report constitutes violation of principles of natural justice and standing order is untenable. The allegation of victimisation is repudiated. The punishment awarded was not excessive. The two members who were dismissed had been so dealt with for proved misconduct and in accordance with the Standing Orders. Hence the contentions of the first party be rejected and the reference be answered in favour of the second party.

4. The following issues have been framed:—

(1) Whether II Party proves that it was justified in dismissing I Party (two workmen) from service?

(2) To what relief I Party workmen are entitled?

Issues Nos. 1 and 2.—

5. Both parties have not let in any evidence, but relied upon the enquiry proceedings.

6. I have perused the enquiry records. The findings of the enquiry officer are not based upon any legal evidence. The two witnesses who have been examined do not support the version of the complaint, Sri E. K. Gopal. During the enquiry, when the Enquiry Officer asked whether he knows Sri Gopal for a long time, I Party workman Sri Thangappan answered as follows:—

“Yes. We are friends. On 11th November 1969 there was a get together in Sri Gopal's house. There we had occasion to exchange some hot words. On that day

Sri Gopal told me that he would see that I am sent out of BEL and because of this he might have complained against me. Now we are friends."

There appears to be considerable force in the above explanation of the first party workman in as much as there is no corroboration of the interested testimony of the complainant. The discrepancies regarding time and the manner of incident are irreconcilable. As per Ex. P-3 True extract of Accident Register (Volume-II), Page 158, the accident had taken place "on 15th November 1969 at 9-00 p.m. in front of Cultural Hall, BEL", whereas it is disclosed from the evidence of Sri A. Subbaraman, who is said to be one of the eye witnesses, that while he was going home at about 7-15 p.m. he saw some people near the Cultural Hall and some people told him that there was some quarrel and Sri E. K. Gopal had gone to hospital and when he saw Gopal at Hospital, Gopal told him that first party workmen has assaulted him, and Subbaraman did not witness the quarrel. The complainant, Mr. Gopal, has stated that he received blows on his chest and back, but that is not corroborated by Dr. (Mrs.) Belliappa, who examined the complaint. According to Dr. (Mrs.) Belliappa he had swelling on the upper lip (left side) and she did not find any injury or mark on the chest or neck or back of his body. Doctor's accident report as per Ex. P-3 True extract of Accident Register is as follows:—

"Particulars of injury—Shirt is torn, 3 buttons are removed, vest is turn in front.

Injuries—of blows on chest—no visible injury on chest and back.

Swelling of the upper lip near left side.

Treatment rendered—Analgin 1 tab. St. Cardinal 1.
Gr. H. S."

With these discrepancies, the Enquiry Officer's findings are fit to be set aside as they are not based on any legal evidence. It therefore follows that the Hind Party was not justified in dismissing the two first party workmen from service and the first party workmen are entitled for reinstatement with continuity of service. So far as the back wages are concerned, I think 75% of the back wages would meet the ends of justice. Hence my Award.

AWARD

7. In the result, the management of Bharat Electronics Limited, Jalahalli Post, Bangalore-13, was not justified in dismissing the two workmen, viz., (1) Sri P.G. Thangappan Nair, Staff No. 1449, and (2) Sri M. K. G. Kurup, Staff No. 2592, Driver from service. The two first party workmen are entitled to the relief of reinstatement with continuity of service and 75% of their back wages. In the circumstances of the case, the parties are directed to bear their own costs.

P. SRINIVASACHARYA,

*Presiding Officer,
Labour Court, Bangalore.*

/COPY/

P. Srinivasacharya,
Presiding Officer,
Labour Court, Bangalore.

ORDER

No. SWL 44 LLA 75, Bangalore, dated the 4th March 1978

S. O. 956. —

Whereas by State Government Order No. FCL 1311 LLD 72, dated 19th January 1973, the Industrial Dispute between the workmen and the management of Bharat Electronics Ltd., Jalahally Post, Bangalore-13, was referred to the Labour Commissioner, Bangalore, for adjudication.

And, whereas the Labour Court, Mangalore, has submitted to the State Government its award in respect of the said Industrial Dispute.

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette*.

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,

Under Secy. to Govt., S.W. and Labour Department.